

**Remarks**

Applicant first thanks the Examiner for the telephone conversation on October 12, 2011 and the Interview Summary on October 18, 2011 which provides the Examiner's view about the non-obviousness issues regarding the pending claims in this application. Applicant also thanks the Examiner for withdrawing the anticipation rejection to claims 25, 27-29, 32-34, 36, 38, 43 and 50.

By the foregoing Amendment, claims 25 and 50 are cancelled, claims 52 and 53 are amended to incorporate all the limitations of claim 50 (now cancelled) and claim 25 (now cancelled) respectively, and claims 27-34, 36, 38, and 43-44 are amended to depend on claim 53. No new matter is added as the amended limitations in the above claims have been disclosed previously. Entry of the Amendment, and favorable consideration thereof, are earnestly requested.

**Claim Rejections – 35 U.S.C. 103(a)**

The Examiner rejected claims 25, 27-38, 40-48, 50, 52 and 53 under 35 U.S.C. 103(a) as being unpatentable over Lewis, Lon (Feeding and Care of the Horse second edition; 1996, Lipponcott Williams and Wilkins, Media, Pa) (hereinafter "Lewis 1996"), Lewis, Lon (Equine Clinical Nutrition Feeding and Care; 1995, Williams & Wilkins, Media, Pa) (hereinafter "Lewis 1995"), and Parsons, HS., (Care and Management of the Older Horse; 2001, Trafalgar Square Publishing, North Pomfret, Vermont) and Weese

et al. (Abstract; J. Am Vet. Med. Assoc. 1999, 214(2), 229-32). Applicant respectfully submits that the pending claims 27-38, 40-48, 52 and 53, as amended, are not obvious in view of these references. Of these claims, claims 52 and 53 are the only independent claims.

Claim 52 is directed at a method for providing critical care to a mammal with an energy deficiency due to hepatic dysfunction, renal dysfunction, or digestive tract disease, by administering to the mammal a diet consisting of an energy promoting effective amount of a composition having between about 2% to about 2.5% fat by weight, between about 95% and less than 100 % by weight of whey powder, and between about 1% to about 5 % by weight of lactase.

Claim 53 is directed at a method for reducing energy deficit in a mammal with an energy deficiency due to hepatic dysfunction, renal dysfunction, or digestive tract disease, by administering to the mammal a diet consisting of an energy promoting effective amount of a composition having between about 2% to about 2.5% fat by weight, between about 95% and less than 100 % by weight of whey powder, and between about 1% to about 5 % by weight of lactase.

In the Office Action, the Examiner stated that Lewis teach horses that suffer from hepatic dysfunction, renal dysfunction, or digestive tract disorders should be tube fed with a diet that meets energy needs and protein needs, such as whey power, and the

diet should be low in or no fat. (Page 4 of the Office Action). The Examiner acknowledged that Lewis do not expressly teach adding between about 1 wt% to 5 wt% lactase to a composition that is liquid or powder form in a method for reducing energy deficit in a mammal with an energy deficit due to hepatic dysfunction, renal dysfunction or digestive tract condition. (Page 6 of the Office Action). According to the Examiner, this deficiency in Lewis is cured by common sense and the teachings of Weese et al. (*Id.*) The Examiner next acknowledged that Lewis do not expressly teach adding the nutrient component, feed component, amino acid chelate, trace mineral, monosaccharides, amino acids, and functional food component as instantly claimed in a method for reducing energy deficit in a mammal with an energy deficit due to hepatic dysfunction, renal dysfunction or digestive tract condition, but such deficiency in Lewis is cured by common sense and the teachings Parsons and Lewis (Equine Clinical Nutrition) (Pages 6-7 of the Office Action).

Applicant respectfully submits that it is not obvious to combine Lewis with Weese et al. This is because mammals, such as horses, with an energy deficiency due to hepatic dysfunction, renal dysfunction, or digestive tract disease can be in *life-threatening conditions*. (Paragraph [0041] of the Application.) Such horses should "avoid high-protein feeds" and that the horse should be fed "late-cut hay (which is generally lower in protein)." (Parsons, page 236). Whey powders are known to have very high lactose content (60-70% lactose). (Paragraph [0051] of the Application). Thus a person skilled

in the art would not likely pick whey powder as a component for the diet for those mammals because it is counterintuitive.

The Examiner rejected the above argument by saying that it would be obvious to add lactase to lactose intolerant animals to avoid adverse outcomes. However, such combination is not obvious. As the affidavit of the inventor points out, it is simply too risky (a strong indication of non-obviousness) to feed mammals who are already in life-threatening conditions a diet comprising whey with the knowledge that whey may cause create a worse peril (which may means death) and hope to avoid the devastating conditions by adding lactase to the diet.

The nonobviousness to combine lactase and whey powder in a diet for mammals with an energy deficiency due to hepatic dysfunction, renal dysfunction, or digestive tract disease can also be supported by the very fact that Lewis 1996, having recognized lactose contained in whey powder is the very reason that whey power contained diet is incompatible with horses having a digestive tract condition, do not suggest adding lactase to treat the problem, instead simply teaches away from adding whey powder to a diet for such horses.

The nonobviousness of the invention can further be evidenced by the clinical studies performed under the instruction of the inventors. This clinical studies show un-

expected results from the combination of an effective proportion of whey powder and lactase in a diet for horses in need. (See the Affidavit of the inventor).

For the above reasons, Applicant respectfully submits that the amended claims 52 and 53 are not obvious in view of the cited references. Accordingly, all dependent claims are patentable.

Respectfully submitted,

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/Wesley W. Whitmyer, Jr./

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Wesley W. Whitmyer, Jr., Registration No. 33,558  
Bojuan Deng, Registration No. 64,512  
Attorneys for Applicants  
ST.ONGE STEWARD JOHNSTON & REENS LLC  
986 Bedford Street  
Stamford, CT 06905-5619  
Tel. 203 324-6155